

PRACTICE TIP

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“No licensee shall conduct an auction in this State without first having a written agreement with the owner of the property to be sold. . . .” N.C.G.S. 85B-7(a). Having a written contract with the owner of goods to be sold will prevent immediate disciplinary action by the NCALB. Having a **good** written contract may prevent other potential disciplinary action or seller-initiated lawsuits. As I have told many of you often times, a good contract makes for a good relationship. In many instances, it is the difference between receiving a notice of a license complaint or not or the difference between being sued or not.

A particular issue has come to the attention of the staff in recent weeks which could have been easily resolved with the proper contract provision. Two inquires have been made to the staff wherein a seller had consigned a variety of items to the auctioneer for auction and then, for some reason, wanted to withdraw the item from auction without reimbursing the auctioneer for his time and effort he had already expended or the potential contractual benefit the auctioneer would have received if the item had sold. The owner/auctioneer contracts involved were reportedly silent on this issue and, therefore, controversies have arisen in both transactions.

The exact wording of your contract as to this issue is a matter for you and your own attorney to work out. However, from the NCALB’s perspective, a clear provision in your contract addressing this possibility may prevent a license complaint and potential disciplinary action.

While reviewing any of your existing seller contracts for possible improvements, please also insure that the following areas are addressed:

- The auctioneers fees and expenses
- A detailed description of the goods to be sold
- A time frame of the sale and duration of the contract, including any post-auction listing tails for any items not sold at auction.
- The terms of sale – Absolute, minimum bids, subject to any liens, etc.
- The proposed location of the sale
- Responsibility for delivery of goods
- Deposits requirements and payment schedules
- Owner/Auctioneer split of forfeited deposits.

The above list is not intended to be exhaustive, but it’s a good starting place. While reviewing your owner/auctioneer contract, it is also a good idea to review your standard terms of sale at auction and any related buyer contracts to make sure they are compatible with your owner/auctioneer contract.

The better written understanding you have with your seller and any potential buyers prior to the sale as to each party’s responsibility, the less chance there will be for a problem to arise in the future. The North Carolina Auctioneer Licensing Board’s primary mission is to protect the integrity of the auction process to better serve the public interest. Having good contracts and managing expectations for both sides of the sale is a big step toward not only protecting your interests, but also those of the public at large.